

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re

CUSTOMS AND TAX ADMINISTRATION OF  
THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
SCHEME LITIGATION

This document relates to 1:18-CV-05053-LAK.

MASTER DOCKET

Case No. 1-18-MD-02865-LAK

**DECLARATION OF KARI PARKS**

I, Kari Parks, depose and say as follows:

1. I am an associate of the law firm Gusrae Kaplan Nusbaum PLLC ("GKN").
2. GKN is counsel for Defendants The Goldstein Law Group PC 401(K) Profit Sharing Plan (the "Plan") and Sheldon Goldstein (together, the "Goldstein Parties") and submit this declaration in support of the Goldstein Parties' Opposition to Third Party-Defendant ED&F Capital Markets, Ltd.'s Motion to Dismiss the Third-Party Complaint Pursuant to Rule 12(b)(2) or for *Forum Non Conveniens* or in the Alternative to Stay All Proceedings Against It.
3. I have personal knowledge of the matters discussed in this declaration.
4. Non-party ED&F Man Holdings Limited ("ED&F Man") is an agricultural commodities merchant that trades in sugar, coffee, molasses, grains, pulses, and animal feed. It also provides access to commodities and capital markets through its brokerage businesses, collectively branded as "ED&F Man Capital Markets."

5. Third-party defendant ED&F Man Capital Markets, Ltd. (“MCM Ltd.”) is a global financial brokerage and a wholly-owned subsidiary of ED&F Man.

6. SKAT has alleged that MCM Ltd. was the broker and created vouchers for at least 47 defendants named in 30 separate lawsuits that have been consolidated into this MDL.

7. Two of those pension plan defendants are alleged to be in New York; three are alleged to be in New Jersey; and two are alleged to be in Connecticut.

8. MCM Ltd. sold “customized equity finance solutions” to the Plan from 2012, when the Plan opened its MCM Ltd. account, to 2019, when MCM Ltd. closed the Plan’s account.

9. In 2014 and 2015, MCM Ltd.’s “customized equity finance solutions” for the Plan included Danish securities transactions designed to profit from the Danish Withholding Tax Act Convention and Protocol Between the United States and Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, U.S.-Den., art. ¶¶ 10(3)(c), 22(2)(e), May 6, 29148, S. Treaty Doc. No. 106-12 (effective date Jan. 1, 2001) (the “Double-Taxation Treaty”). MCM Ltd. created, structured, and solicited all of the transactions, and created their accompanying tax vouchers, at issue in this case.

10. Switzerland-headquartered non-party Volcafe Ltd. (“Volcafe”) is a coffee trader and an indirect subsidiary of ED&F Man.

11. Volcafe, founded in 1851, became one of the world’s largest coffee traders before being acquired by ED&F Man in 2004.

12. Volcafe trades green (unroasted) coffee beans and purports to provide coffee beans for 50 billion cups of coffee per year.

13. Volcafe has an American affiliate, also owned by ED&F Man, headquartered in Irvington, New York.

14. Upon information and belief, due to the seasonal nature of coffee growing, Volcafe periodically has large amounts of cash acquired from the sale of raw coffee beans to roasters and wholesalers, which sits idly waiting for the seasonal purchases of fresh beans from farmers.

15. Upon information and belief, due to historically-low market interest rates in 2014 and 2015, ED&F Man and its various subsidiaries conceived a plan to maximize Volcafe's returns on its cash reserves by lending cash to MCM Ltd. brokerage customers with large fees and interest rates significantly higher than the prevailing market rates.

16. Until a recent collusion scandal, the London Interbank Offered Rate ("LIBOR") was a benchmark interest rate that purported to represent the rates of interest at which banks would lend cash to each other.

17. In 2006, the average three-month U.S. Dollar LIBOR was 5.198%.

18. In 2014, the average three-month U.S. Dollar LIBOR was .234% — less than one quarter of one percent.

19. In 2015, the average three-month U.S. Dollar LIBOR was .316% — less than one third of one percent.

20. In 2018, the average three-month U.S. Dollar LIBOR was 2.307%.

21. In 2014 and 2015, MCM Ltd. solicited the Plan to purchase Danish securities and created and structured the transactions, arranging not only the purchases and sales of the securities, but also their offsetting hedging positions and financing.

22. On multiple occasions, Volcafe supplied both the financing of the Plan's purchases and the securities to be purchased, themselves.

23. Attached hereto as Exhibit A is a true and correct copy of an email exchange and attachments between MCM Ltd. Equity Finance Trader Oliver Bottomley and Volcafe Equity Finance Trader Richard Goodwin dated April 23, 2014.

24. Mr. Goodwin was an Equity Finance Broker with Volcafe from March 2012 to December 2014, and an Equity Finance Broker with MCM Ltd. from January 2015 to February 2015.

25. Per Exhibit A, on April 23, 2014, Mr. Bottomley requested that Mr. Goodwin and Volcafe help MCM Ltd. buy 860,000 "more" shares of D/S Norden at DKK 223.405 T+4 per share.

26. Exhibit A also includes an April 23, 2014 email confirmation from Switzerland-based Mr. Goodwin to Dubai-based MCM Ltd. trader Chris Henstock, carbon-copying Ms. Mina and MCM Ltd. Managing Director Victoria Foster, both of whom were based in London.

27. In that email, Mr. Goodwin confirms that Volcafe sold 860,000 shares of D/S Norden to MCM Ltd. at DKK 233.405 per share on April 23, 2014.

28. In that April 23, 2014 transaction, the Industrial and Commercial Bank of China acted as Volcafe's clearing bank, while J.P. Morgan acted as MCM Ltd.'s clearing bank.

29. Attached hereto as Exhibit B is a true and correct copy of an April 24, 2014 emails between MCM Ltd. Equity Finance Trader Oliver Bottomley and Stacey Kaminer, who acted as agent for the Goldstein Plan, among other American pension plans.

30. In that email, Mr. Bottomley recommended that the Goldstein Plan and two other American pension plans sell a combined total of 860,000 shares of D/S Norden at DKK 225.4258 per share – DKK 7.9792 less per share than the price at which that Volcafe sold the shares the previous day.

31. Had MCM Ltd. facilitated the Goldstein Plan's sale of 215,000 D/S Norden shares at the same rate that it purchased D/S Norden from Volcafe, the Goldstein Plan would have made an additional DKK 1,715,528, or USD 317,372.68 (at April 24, 2014's exchange rate of DKK .185 per U.S. Dollar).

32. Attached hereto as Exhibit C is a true and correct copy of a March 5, 2015 email from MCM Ltd. Equity Finance Trader Sara Mina to Ms. Kaminer, suggesting that the Plan sell 1,115,000 shares of Novozymes A/S at DKK 317.04188 per share.

33. Attached hereto as Exhibit D is a true and correct copy of a March 5 email from Ms. Mina to Ms. Kaminer, suggesting that the Plan purchase 4 million shares of Novo Nordisk A/S at DKK 329.1 per share.

34. Attached hereto as Exhibit E is a true and correct copy of a March 13, 2015 email from Ms. Mina to Ms. Kaminer, suggesting that the Plan purchase 3.4 million shares of Danske Bank DC at DKK 176 per share.

35. MCM Ltd. transferred money to and from the Goldstein Plan via a National Financial Services brokerage account held at J.P. Morgan Chase at One Chase Plaza, New York, New York 10005.

36. Attached hereto as Exhibit F are true and correct copies of the following unpublished cases, which the Goldstein Parties cite in their Opposition:

- a. Alibaba Grp. Holding Ltd. v. Alibabacoin Found., No. 18-cv-2897 (JPO), 2018 WL 5118638 (S.D.N.Y. Oct. 22, 2018) (Oetken, J.)
- b. Mago Int'l LLC v. LHB AG, No. 13 Civ. 3370 CM, 2014 WL 2800751 (S.D.N.Y. June 18, 2014) (McMahon, J.)
- c. Vasquez v. Hong Kong & Shanghai Bankign Corp. Ltd., No. 18 Civ. 1876 (PAE), 2019 WL 237810 (S.D.N.Y. May 30, 2019), reconsideration denied, No. 18 Civ. 1876 (PAE), 2019 WL 3252907 (S.D.N.Y. July 19, 2019) (Engelmayer, J.)

I, Kari Parks, hereby declare under penalty of perjury that the foregoing is true and correct.

Dated: August 30, 2019  
New York, New York

/s/ Kari Parks